IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1163 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAGANBHAI M PATEL

Versus

BAI RATUDI WD/O TEJABHAI JALABHAI DAMORE

Appearance:

MR RAJNI H MEHTA for Petitioners

MR MUKESH R SHAH for Respondent No. 1, 7

DELETED for Respondent No. 6

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 27/07/2000

ORAL JUDGEMENT

[Per : D.C.Srivastava,J.]

The owner cum driver - appellant No.1 and the New India Assurance Co. Ltd.-appellant NO.2 have filed this appeal challenging the award dated 7th September, 1996 rendered by the Motor Accident Claims Tribunal, Nadiad awarding compensation of Rs.1,41,000/- together with 12% per annum interest from the date of the application till realization together with proportionate costs.

We have heard Shri Rajni H. Mehta, learned counsel for the appellant and Shri R.N. Shah, learned counsel for the respondents at great length.

Brief facts giving rise to this appeal are shortly stated as under:

The incident took place on 14.5.1986 at about 1.00 p.m. at Valsad. The deceased and other persons had gone for agricultural work and in the afternoon, the deceased was loading and unloading fertilizer in the tractor No. GRM 8723 and Trolley No. GTJ 2933. The owner cum driver of the tractor - opposite party no.1 before the tribunal tried to start the tractor but somehow, it did not start. The labourers were asked to push the tractor. The deceased was standing on the kacha side of the road. The tractor started and because of the negligence of the appellant No.1, it dashed with the deceased. The tractor ran over the leg of the deceased causing serious injuries. The deceased was admitted in Anand Hospital and remained admitted from 16.5.1986 to 25.5.1986. He was discharged and, thereafter, transferred to S.S.G. Hospital, Vadodara because it was reported that the deceased had developed titanous. The Treatment was given at S.S.G. Hospital, Baroda and ultimately, the deceased died on 31st May, 1986 in the Hospital at Baroda. Thereafter, the claim petition was preferred.

The owner cum driver filed written statement denying the accident. The income, age, dependency and the manner of accident were all denied by the owner cum driver. Belated FIR was lodged on 12.9.1986. A Criminal Case was initiated against the appellant No.1 in which he was ultimately acquitted on 7.9.1988.

No written statement was filed by the insurance company. On the other hand, the insurance company appellant no.2 adopted the written statement filed by the appellant no.1.

The tribunal considered the entire evidence on record and rejected the theory that the incident did not occur as alleged and that the injury was caused to the deceased by spade. The tribunal was of the opinion that the accident took place as alleged in the claim petition. The tribunal also computed the compensation under various heads and as such, the claim petition was partly allowed. It is, therefore, this appeal.

Shri Rajni H. Mehta, learned counsel for the appellant has strenuously contended that there was no case of vehicular accident and that the injury was caused to the deceased by fall of spade and as a consequence thereof, titanous was developed and he died. On these facts, he contended that there can be no liability either of the insurance company or of the owner cum driver of the tractor trolley. We have given our thoughtful consideration to the entire material on record. The theory that the injury was caused by spade is subsequent development. Learned counsel Shri Mehta has argued that initially a story was given in the medical papers as injury caused by spade. However, there is no link evidence to explain as to who gave this story or the story of injury being caused by spade. It was not the case that the deceased was hit by the tractor on vital part of the body. On the other hand, the injury was caused on the toe of the deceased. The story set up in the claim petition appears to be probable as well in as much as if the defective tractor suddenly started, its wheel might have run over the toe of the deceased. The case in the FIR as well as in the claim petition was that the deceased and other labourers were engaged for loading fertilizer in the trolley of the tractor owned by the appellant No.1. In such a work, there was hardly any necessity for the deceased to carry spade with him. What was given by some one accompanying injured to the hospital that was recorded in the Hospital record. That record cannot be conclusive evidence as to how the injury was caused. It may be mentioned that there was no eye witness and no eye witness was examined as well. The driver, appellant No.1, in these circumstances, was the best witness to unfold the manner in which the accident took place. If it was a case of total denial that his tractor was not involved in the accident, it was all the more necessary for him to enter the witness box and state that it was not a case of injury being caused by tractor driven by him. Since the driver has not entered the witness box, true facts did not come before the tribunal. In these circumstances, the tribunal was justified in believing the statement of the son of the deceased which

was in the line of the story set up in the FIR as well as in the claim petition.

Shri Rajni Mehta has contended that the FIR was belated inasmuch as the accident took place on 14th May, 1986 whereas the FIR was lodged on 12.9.1986. However, this delay could have been relevant and material in the criminal case and not before the tribunal. The criminal case was already decided when the impugned award was rendered by the tribunal on 7th September, 1996. The owner was acquitted by the criminal court on 7th September, 1988. The judgment of the criminal court shows that for want of evidence, the appellant no.1 was acquitted. As such, no aid can be taken from the judgment of the criminal court whether it was a case of rash and negligent driving of the tractor by the appellant no.1 or it was a case of injury caused by spade.

Dr. Niranjan Sanghavi of Baroda Hospital in his statement has stated before the tribunal that the history for injury was given as injury by spade, but he did not agree that the injury could be caused by spade. According to him, it was crush injury. There is nothing like crush injury in the medical jurisprudence. It is lacerated injury and not crush injury. The lacerated injury could be caused by fall of spade over the toe and also if the wheel of the truck could have run over the toe of the deceased. Since we have already indicated that there could not be any necessity for the deceased to carry spade for loading and unloading of fertilizer, there could not be any injury caused by spade. It is not the case of the parties that the injury was caused by spade in some free fight. Looking to the injury, it could not be said that it was self suffered or self inflicted injury. Consequently, looking to the medical evidence, we are of the view that the injury was caused by accident namely tractor hitting the toe of the deceased which caused lacerated injury on the toe.

It cannot be said that because the deceased developed tetaneous and died, the appellants' liability can be mitigated and exonerated. In our view, death was direct result of the injury sustained by the deceased in the vehicular accident. As such, it can be held that the deceased died on account of the injuries sustained by him in the vehicular accident.

From the story that the truck developed defect and the labourers were asked to give push so that it could be started and they actually gave push to the

tractor and it suddenly started, it can be said that the appellant was negligent and rash in as much as he could not see the deceased standing on the kacha road at the time of accident. Consequently, negligence of the appellant No.1 while driving the tractor is fully established.

Coming to the quantum of compensation, not much can be said from the side of the insurance company nor from the side of the appellant no.1. The compensation worked out by the tribunal is reasonable compensation. As against the compensation claimed to the tune of Rs. 2,00,000/-, the tribunal awarded a sum of Rs.1,41,000/together with 12% per annum interest. Thus, the compensation awarded by the tribunal does not appear to be exorbitant.

For the reasons stated above, we do not find any merit in this appeal which is hereby dismissed with no order as to costs.

27.7.2000. (D. C. Srivastava,J.)

(H. K. Rathod,J.)

Vyas